IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 52

WCC No. 2007-2021

MATTHEW R. RAYMOND

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent.

ORDER DENYING UNINSURED EMPLOYERS' FUND'S MOTION FOR RECONSIDERATION

Summary: Respondent moved this Court to reconsider its decision dismissing the alleged uninsured employer from this case. Respondent contends that the Court did not have all the necessary facts available to it when it reached its decision, and that the Court misinterpreted the law when it concluded that the alleged uninsured employer was not a proper party to the action.

Held: Respondent's arguments have not persuaded the Court that the statutory procedures can be circumvented without impinging upon the due process rights of uninsured employers. Accordingly, Respondent's motion for reconsideration is denied.

¶ 1 Respondent Uninsured Employers' Fund (UEF) has moved this Court for reconsideration of its September 19, 2008, Order which dismissed the alleged uninsured employers as parties to this case.[1] Petitioner Matthew R. Raymond has filed a brief in opposition to the UEF's motion for reconsideration.[2]

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[1] Uninsured Employers' Fund's Motion to Reconsider and Brief in Support ("Motion to Reconsider"), Docket Item No. 90.

[2] Petitioner's Memorandum in Opposition to Uninsured Employers' Fund's Motion to Reconsider, Docket Item No. 91.

¶ 2 In this Court's September 19, 2008, Order,[3] I concluded that, notwithstanding the provisions of ARM 24.5.307A, which automatically deems an alleged uninsured employer a party to any action involving entitlement to UEF benefits, uninsured employers cannot be joined as a matter of course without complying with the statutory requirements of § 39-71-506, MCA, which, in turn, mandates that the due process requirements of § 39-71-2401(2)-(3), MCA, must be satisfied. I explained:

> Section 39-71-2401(2), MCA, provides that a dispute arising under this chapter for which a specific provision of the chapter gives jurisdiction to the Department of Labor and Industry ("Department"), ***must*** be brought before the Department. Section 39-71-2401(3), MCA, provides that an appeal from the Department's order may be made to the Workers' Compensation Court. In the present case, the UEF has not yet made a claim for reimbursement from [the alleged uninsured employer]. Therefore, there is no dispute between the UEF and [the alleged uninsured employer] to bring before the Department as mandated by § 39-71-2401(2), MCA. Accordingly, there is no Department order to appeal to this Court pursuant to § 39-71-2401(3), MCA. These are the due process requirements which § 39-71-506(1), MCA, expressly requires for the UEF to successfully assert a claim for reimbursement from an uninsured employer. Until these due process requirements are satisfied, this Court cannot consider a reimbursement dispute between the UEF and [the alleged uninsured employer].[4]

¶ 3 In its brief in support of its motion for reconsideration, the UEF argues that this Court erred when it concluded that the UEF had not demanded reimbursement from the uninsured employer for any benefits which it might pay to Petitioner. The UEF asserts that on August 13, 2007, it advised the alleged uninsured employer in this matter that he would be liable to the UEF for all benefits paid by the UEF if Petitioner's claim was found compensable by this Court.[5] In support of its assertion, UEF attached an affidavit from Cathy Brown, its Administrative Specialist/Supervisor, and a copy of an August 13, 2007, letter sent to the alleged uninsured employer by Claims Adjuster Bernadette Rice.[6]

¶ 4 Rice's letter does not satisfy the due process requirements of § 39-71-2401(2)-(3), MCA, and therefore this prospective demand letter does not comport with the requirements

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[3] *Raymond v. UEF*, 2008 MTWCC 45.

[4] *Raymond*, ¶ 7.

[5] Motion to Reconsider at 2-3.

[6] Exhibits attached to Motion to Reconsider.

of § 39-71-506, MCA. The existence of the letter does not change the fact that alleged uninsured employers are entitled to due process as specifically mandated by § 39-71-506, MCA. That due process includes the departmental procedure described in § 39-71-2401, MCA. Therefore, UEF is not entitled to reconsideration of the September 19, 2008, Order on these grounds.

¶ 5 UEF further argues that the Court should reconsider its decision because requiring the issue of an employee's status to be tried separately from a claim for reimbursement from an alleged uninsured employer causes the risk that separate tribunals may reach contrary results. I agree that this is a possibility.[7] Citing *Johnson v. MMIA*,[8] UEF points out that this Court should avoid wherever possible the possibility of creating situations in which inconsistent results may occur. While this is true, I cannot do this at the expense of finding jurisdiction where none exists. Section 39-71-506, MCA, provides that the ***only*** way the UEF can seek reimbursement from an alleged uninsured employer is by first satisfying the due process requirements of § 39-71-2401(2) and (3), MCA. This requires that the dispute between the UEF and the alleged uninsured employer "***must*** be brought before the department,"[9] after which the Department's order may be appealed to this Court.[10] The UEF cannot bypass the departmental procedure for the sake of judicial economy, and I cannot create or enforce a process which, while more judicially economical, contravenes a statute which binds this Court.

¶ 6 The UEF further argues that this Court cannot decline to follow ARM 24.5.307A, which provides for the joinder of alleged uninsured employers in actions involving an uninsured employee and the UEF. The UEF argues that administrative rules have the force of law and cannot be ignored.[11] Petitioner responds that this Court has the authority to determine if its own rules do not comply with the statutes under which they were adopted, and that this Court may reject rules which it determines do not comply with the necessary statutes. Petitioner argues:

> Section 2-4-305(6), MCA, provides that an administrative rule is not valid unless it is consistent and not in conflict with the statute. "Every court

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[7] See, e.g., *UEF v. Gould*, 2004 MTWCC 79, in which the UEF paid benefits and this Court later determined that the alleged uninsured employer was not liable for the benefits, thereby leaving the UEF without a valid claim for reimbursement.

[8] *Johnson*, 1998 MTWCC 50.

[9] § 39-71-2401(2), MCA. (Emphasis added.)

[10] § 39-71-2401(3), MCA.

[11] Motion to Reconsider at 5-6.

> of record may make rules, not inconsistent with the laws of this state, for its own government and the government of its officers." § 3-1-112, MCA. The WCC is a court of record. § 3-1-102, MCA. . . . Courts, including the WCC, can invalidate an administrative rule that is found to be inconsistent with its statutory authority.
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> > An administrative rule will be considered invalid "only upon a clear showing that the regulation adds requirements which are contrary to the statutory language or that it engrafts additional provisions not envisioned by the legislature." To make this determination, the court must interpret the statute.[12]

¶ 7 As I held in the September 19, 2008, Order, my interpretation of the applicable statutes has caused me to conclude that they are in conflict with the provisions of ARM 24.5.307A. Clearly, ARM 24.5.307A was promulgated by this Court to foster judicial economy, and it did so. Although I agree that the provisions of ARM 24.5.307A serve a practical purpose, a statutory scheme has been put in place by which disputes between the UEF and an alleged uninsured employer are resolved. As the Montana Supreme Court recently noted in another workers' compensation case:

> While the Workers contend that the "practical effect" of this scheme is to foster confusion between two courts, increase the likelihood of conflicting rulings, and compound time and expense for all litigants–a contention which is not supported by any evidence in the record– the statutory scheme is what the Legislature created, and conjectured savings in judicial economy cannot be a source of subject-matter jurisdiction.[13]

¶ 8 Even assuming, as UEF argues, that the statutory scheme at issue in this case may result in conflicting rulings and compromise judicial economy, it is not the province of this Court to simply ignore a statutory framework created by the Legislature in the interests of judicial economy.

ORDER

¶ 9 Respondent's motion for reconsideration is **DENIED**.

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[12] Petitioner's Memorandum in Opposition to Uninsured Employers' Fund's Motion to Reconsider at 3, citing *Kuhr v. City of Billings*, 2007 MT 201, 338 Mont. 402, 413-14, 168 P.3d 615, 623 (citations omitted).

[13] *Thompson v. State*, 2007 MT 185, ¶ 34, 338 Mont. 511, 167 P.3d 867.

¶ 10 Pursuant to § 39-71-517, MCA, Petitioner and Respondent shall continue to serve all pleadings and all other litigation papers upon the Department and any alleged uninsured employers.

DATED in Helena, Montana, this 11th day of December, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: J. Kim Schulke
Arthur M. Gorov
Joe Seipel
Submitted: October 21, 2008